IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 34 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PATEL AMBALAL SHANKERDAS

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 34 of 2002

MR Jal Unwala for Mr PK JANI for Petitioner No. 1

Mr B D Desai, APP for State

Mr Manish Joshi for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 11/02/2002

ORAL JUDGEMENT

The present revision application has been filed under section 397 read with section 401 of the Code of

Criminal Procedure, 1973 (for short, 'the Code) challenging the judgment and conviction orders recorded against the petitioner for offence punishable under section 138 of the Negotiable Instruments Act, 1881.

2. The petitioner was prosecuted before the learned Judicial Magistrate First Class, Mehsana in criminal case No.5878/99 for the said offence and was convicted for the said offence and was sentenced to suffer S.I. for six months and was directed to pay fine of Rs.3,000/-, in default of payment of fine, he was required to suffer further S.I. for three months.

3. The petitioner carried the said matter before the Sessions Court by way of Criminal Appeal No.53 of 2001 unsuccessfully. Hence this Revision Application.

Rule was issued and Mr B D Desai, learned APP appears for the State and Mr Manish Joshi, learned Advocate appears for respondent no.2. I have heard them.

4. During the course of hearing, an affidavit was filed. It was a common affidavit of both the parties and it was indicated in it that the amount of cheque in dispute has been paid in full by Demand Draft on 11.2.2002 and, therefore, demand of the contesting respondent has been substantially complied with. In above view of the matter, it was prayed on behalf of the petitioner that the sentence may be adequately reduced. It has been found that the petitioner has undergone jail imprisonment for a period of six days. Looking to the fact of payment of the amount in full and looking to the consent terms rendered by the learned Advocate for the contesting respondent and after hearing the learned APP, it is found that when the amount has been fully paid up then the civil disputes between the parties has come to an end. In that view of the matter, it would be just and proper to accept the said request of the petitioner for reduction of the sentence. It is required to be considered that this was a joint request of the complainant as well as the accused.

5. For the foregoing reasons, this revision application is partly allowed. The judgment and conviction order recorded by the learned Magistrate and confirmed by the learned Addl.Sessions Judge, Mehsana are ordered to be confirmed. Even the order of payment of fine is also ordered to be confirmed. However, so far as the jail sentence is concerned, it is directed that the petitioner shall undergo S.I. for the period already undergone and, therefore, his bail bonds will stand

cancelled.

Rule is made absolute to the aforesaid extent.

11.2.2002 [D P Buch, J.]
msp